

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:15-cv-54
)	
GLOUCESTER COUNTY SCHOOL)	
BOARD,)	
)	
Defendant.)	
)	

PLAINTIFF’S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff Gavin Grimm (“Gavin”) respectfully requests leave of Court to file a Second Amended Complaint, a copy of which is attached hereto. The grounds for this motion are:

1. Gavin filed his original Complaint on June 11, 2015, when he was 16 years old and had just completed his sophomore year at Gloucester High School. ECF No. 8. The Complaint sought declaratory relief, preliminary and permanent injunctive relief, damages in an amount determined by the Court, reasonable costs and attorneys’ fees, and other such relief as the Court deems just and proper. ECF. No. 8 at 14-15.

2. A First Amended Complaint was filed on August 22, 2017, when Gavin was 18 years old and had recently graduated from Gloucester High School. ECF No. 113. Unlike the original Complaint, the First Amended Complaint does not seek compensatory or punitive damages. ECF No. 113 at 17.

3. Both the original Complaint and First Amended Complaint asserted that Defendant's bathroom policy violates Gavin's rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), and the Equal Protection Clause of the Fourteenth Amendment.

4. On December 12, 2017, with Plaintiff's consent, the Court dismissed the First Amended Complaint's request for injunctive relief as moot in light of Plaintiff's graduation. ECF No. 132.

5. On May 22, 2018, this Court denied Defendant's motion to dismiss the remainder of the First Amended Complaint. ECF No. 148.

6. Defendant filed an Answer to the First Amended Complaint on July 20, 2018. ECF No. 154.

7. On September 26, 2018, the Court entered a scheduling order providing that all discovery shall be completed by March 12, 2019. ECF No. 165.

8. Gavin now seeks leave of Court to file a Second Amended Complaint (attached as Exhibit A). "Rule 15(a) directs that leave to amend 'shall be freely given when justice so requires.' This liberal rule gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc). "[L]eave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." *Id.* (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir.1986)).

9. The proposed Second Amended Complaint alleges additional facts regarding Defendant's ongoing violations of Gavin's rights under Title IX and the Equal Protection Clause.

As discussed in the proposed Second Amended Complaint, Gavin has obtained a Virginia court order declaring that his sex is male, and he has received an updated birth certificate reflecting that his sex is male. But Defendant has refused—and continues to refuse—to update Gavin’s official school transcript to match the male gender marker on Gavin’s birth certificate because Defendant continues to regard his “biological gender” as female. As a result of Defendant’s refusal, Gavin faces ongoing discrimination and stigma every time that he is required to provide a high school transcript to a college or potential employer because he must provide a transcript that declares his sex as “female.”

10. The Second Amended Complaint also updates the First Amended Complaint to remove the requests for injunctive relief dismissed on December 12, 2017, and the allegations related to those requests for relief.

11. In addition, the Second Amended Complaint contains minor stylistic changes and revisions based on evidence produced in discovery.

12. This Second Amended Complaint would not prejudice Defendant and is not offered in bad faith. Counsel for Plaintiff provided counsel for Defendant with notice of this forthcoming motion before Defendant conducted the deposition of Gavin and his mother on October 19, 2018. Moreover, the current scheduling order provides ample time for Defendant to serve any additional discovery requests.

13. The Second Amended Complaint would also not be futile. “Leave to amend . . . should only be denied on the ground of futility when the proposed amendment is clearly insufficient or frivolous on its face.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see Parker v. Berryhill*, No. 4:17CV143, 2018 WL 5255233, at *1 (E.D. Va. Oct. 22,

2018). The sufficiency of the proposed amendment is assessed by the same standards as a motion to dismiss for failure to state a claim. *See id.*

14. Gavin's proposed amendments easily meet that standard. The district court has already ruled that Gavin has plausibly alleged that the Board violated Gavin's rights under Title IX and the Fourteenth Amendment by singling Gavin out for different treatment from other boys and prohibiting him from using the same common boys' restrooms that every other boy is allowed to use. ECF No. 148. The district court concluded, among other things, that the Board's policy "classified Mr. Grimm differently on the basis of his transgender status and, accordingly, subjected him to sex stereotyping" under Title IX and the Fourteenth Amendment. *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 750 (E.D. Va. 2018). The Board's refusal to update Gavin's school transcript to match his birth certificate likewise subjects Gavin to different treatment because he is transgender and does not conform to the Board's sex stereotypes about who a boy should be.

15. Counsel for Plaintiff provided a copy of the proposed Amended Complaint to counsel for Defendant on October 26, 2018. Instead of providing Defendant's position on the motion, counsel for Defendant asked counsel for Plaintiff to delay filing this Motion for Leave to Amend until after the Board's November 13, 2018 meeting. On December 5, 2018, counsel for Defendant advised that Defendant opposes this motion being granted.

For all these reasons, Plaintiff respectfully requests that the Court grant leave to file the attached Second Amended Complaint.

December 7, 2018

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA, INC.

/s/

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** Admission pending, notice of appearance forthcoming

Counsel for Plaintiff Gavin Grimm

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December 2018, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the Eastern District of Virginia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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